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TAGS: [PHUM](#) [PGOV](#) [KIRF](#) [CH](#)  
SUBJECT: HUMAN RIGHTS: LEGAL EXPERTS TELL COURT NEW YORK  
TIMES RESEARCHER SHOULD HAVE BEEN FREED

REF: BEIJING 5129 AND PREVIOUS

Classified By: Political Section Internal Unit Chief  
Kin Moy for reasons 1.4 (b) and (d).

¶1. (C) Summary: The defense attorney for jailed New York Times' researcher Zhao Yan has filed a statement to the court from six top Chinese legal scholars arguing that Zhao should have been released when prosecutors withdrew the fraud charge against him on March 17. New York Times Beijing Bureau Chief Joseph Kahn said that the defense lawyer hopes the scholars' opinion will help to break the stalemate that has existed in Zhao Yan's case since last month. End Summary.

¶2. (C) Six leading Chinese legal scholars signed a written opinion that Zhao Yan's defense attorney filed with the Beijing No. 2 Intermediate Court on April 12. The letter, a copy of which was passed to poloff by NYT Beijing Bureau Chief Joseph Kahn on April 13 states:

- The Court decision to extend the time for investigation of the fraud charges against Zhao Yan after the Procuratorate had withdrawn the indictment for lack of evidence is not in accord with China's Criminal Procedure Law and the Supreme People's Court's judicial interpretations.
- Under the Procuratorate's Criminal Procedure Regulations, it can request withdrawal of the indictment only if one of three conditions has been met: facts of a crime do not exist, the crime was not committed by the defendant, or the defendant should not bear legal responsibility. After withdrawing the case for any of those reasons, the Procuratorate should not continue to detain a defendant.
- The Criminal Procedure Law and its relevant legislative spirit indicate that there is no legal basis to continue to detain a defendant for further investigation of facts after the indictment has been withdrawn.

¶3. (C) Kahn said Zhao's defense attorney, Mo Shaoping, hopes that the legal opinion will help break a stalemate that has existed since the Procuratorate suddenly withdrew the indictment against Zhao Yan on March 17. Attorney Mo and several media reports speculated that Zhao would soon be released but the Court ultimately continued to detain Zhao and extended the time for further collection of evidence against him in the fraud case. Zhao remains jailed with no indication of a date for the trial or future proceedings.

14. (C) The scholars who signed the legal opinion are law professors who have participated in drafting of legislation and maintain no particular connection with political movements. They signed the opinion under condition that it be presented to the court but not used in any media campaign to free Zhao. They are:

- Chen Guangzhong, former dean of the China University of Political Science and Law (CUPSL) who participated in the 1996 revision of the PRC Criminal Procedure Law.

- Fan Chongyi, head of the CUPSL Criminal Procedure Research Center, secretary of the China Law Society Procedural Law Research Center and an advisor to the Supreme People's Procuratorate and Supreme People's Court training colleges.

- Chen Weidong, head of the People's University Procedural Law Research Center and its Procedural and Judicial Reform Research Center.

- Wang Jiancheng, Beijing University Law School professor of criminal procedure and criminal evidence.

- Wang Minyuan, Head of the China Academy of Social Sciences Legal Research Office's Procedural Law Research Office and a former employee of the National People's Congress' Legal Affairs Committee.

- Gu Yongzhong, CUPSL Professor, lawyer at the Beijing Chenwei Law Firm and vice-chair of the All-China Lawyers Committee Criminal Law Committee.

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